

CONFIDENTIAL LITIGATION MATERIAL SUBJECT TO PROTECTIVE ORDER

Rebuttal Expert Report of Emily Easton

Freeman v. Deebs-Elkenaney et al., No. 1:22-cv-02435-LLS-SN (S.D.N.Y.)

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I was asked by the CDAS law firm to provide an additional report in rebuttal to certain opinions by the plaintiff's expert Kathryn Reiss. The opinions in this report are based on my review of Reiss's report and the materials I reviewed for my opening report, including the 2011 and 2013 drafts of the plaintiff's manuscript *BMR*, book one of the Crave series (*Crave*), and portions of later Crave books cited by Reiss. I am prepared to testify as to these opinions at trial and reserve the right to supplement or amend my opinions at counsel or the Court's request.

I. Introduction

The main point of Reiss's report appears to be comparing various versions of *BMR* with the Crave series and identifying supposed similarities. I did not perform such a comparison for my opening report because I was instructed by counsel that directly comparing two books for similarity is something that jurors or the Court, not expert witnesses, are supposed to do. As someone experienced in the publishing industry and with the writing in Young Adult ("YA") books, I do not think an expert witness is needed to compare two books for possible similarities or differences. Even though many adults enjoy reading them, YA books are written on a reading level for an audience of 12- to 18-year-olds. There is no reason why adults on a jury could not read two YA books and decide for themselves whether they are substantially similar.

Reiss opines that ordinary "readers might not notice" any similarities "because of the difference in tone and voice between Freeman's manuscripts and Wolff's novels." (Reiss ¶ 32.) On this point, I completely agree. Ordinary readers will not find the works similar precisely because of the difference in tone and voice (among many other elements) between the works. Reiss's concession establishes both that there are major differences between the works and that it would be dangerous to substitute her judgment for that of ordinary readers.

I find it especially striking that Reiss claims to be comparing *BMR* to the Crave series but did not provide copies of the works themselves with her report. Instead, she bases her comparison on short quotes and phrases taken out of context and her own summaries and descriptions of the works, which are often quite inaccurate. For example, nearly all of ¶¶ 35 and 36 of the Reiss Report are comparisons using Reiss's own descriptions, rather than anything from the actual works themselves. Not until sub-paragraph (d) of ¶ 36 does Reiss even begin providing page citations (which are often wrong), and even then, she mostly relies on her own descriptions, with only a few quotes of single words and short phrases sprinkled in.

To show how misleading all of this is, I have provided the relevant full chapters of the actual books at issue themselves, side by side, in the Appendix to this report, so that the Court can judge for itself. Looking at the actual works reveals that Reiss's descriptions of the works, and by extension, her analysis of similarities, are strikingly inaccurate and cannot be trusted. Among other problems, Reiss has distilled her descriptions down to their simplest and most generic elements—stripping out the specific qualities that distinguish the writing, falsely making the passages she selectively identifies sound the same—when the actual sections of these works read side by side are remarkably different. My Appendix also shows how these books are not highly technical or scientific and can be read and compared by ordinary readers rather than writing professors.

Finally, Reiss claims to have considered six different versions of *BMR*. I only reviewed the two versions I was told the plaintiff selected per the Court's order and will only address those two

versions. But note that Reiss states that all the different versions of *BMR* have the same “basic story, plot, characters” and that “their motivations and feelings, the dangers they encounter, the general pacing of events, and climax of Freeman’s various manuscripts are consistent throughout all the versions.” (Reiss ¶ 225.) If we take Reiss at her word, this means that reviewing the two versions the plaintiff selected per the Court order (or even just one of them) should be enough to decide whether *BMR* is substantially similar to the Crave series.

II. Reiss’s Analysis of “Qualitative Similarities”

Beginning in ¶ 35, Reiss claims to discuss “qualitative similarities” between *BMR* and the Crave series. For the above reasons, I did not make lists of differences in my opening report, although I certainly could have done so if asked. But since Reiss has offered her own lists of supposed similarities, I believe it is only fair that I be allowed to point out some of the differences that I have noticed in evaluating her opinions. The examples below (which are not exhaustive) illustrate why Reiss’s report is consistently incorrect and misleading. I am confident that I could identify significant differences that overcome all the alleged similarities Reiss alleges.

Reiss’s entire analysis is untrustworthy because it bases the comparison on her own skewed description of the works rather than on the works themselves. In the below discussion, I provide actual excerpts from the works and reference my Appendix (where the relevant sections of the works themselves are put side by side) to show what they really say.

Importantly, Reiss appears to agree with my overall point that the parties’ works are filled with common tropes used in the YA Paranormal Romance genre. She admits that “[b]ooks in the same genre will often have certain conventions—and tropes—that will be present across books in the genre.” (Reiss ¶ 15.) While Reiss also claims to have identified “examples of similarities that went beyond genre convention or trope” and to have “eliminate[d] similarities which were the result of genre conventions and tropes” (Reiss ¶¶ 7-8), she never explains her process for excluding these similarities, and no such identification is made in her report. Note that many books that *predated* *BMR* contained the same tropes and common themes, as fully explained in my opening report. One such book, for example, is *Tempest Rising*, which was written by Wolff herself and predates Freeman’s association with Emily Kim.

Below, I point out where Reiss’s claimed similarities are merely common tropes of the genre (though this is also not exhaustive).

A. Paragraph 35: Illustration Of Use Of Tropes

Reiss’s ¶ 35 alone makes it clear that she has not, in fact, excluded common genre tropes from her analysis. The below table shows how the similarities claimed in this paragraph nearly always tie back to the exact tropes I identified in my opening report:

Reiss ¶ 35	Tropes Identified In Easton Rep. (table pp. 6-8)
35(a) (heroine's move to Alaska after death of parents and she "suffers panic and anxiety from the trauma")	Teenaged protagonist; remote setting; death of parents; surrogate parents; moves/is new in town; experiences anxiety, depression, or panic attacks
35(b) (living with remaining family and being kept in the dark about powers)	Death of parents; surrogate parents; supernatural family; heroine thinks she's a normal human
35(c) (meeting romantic lead, "a dangerous guy with secrets of his own" and feeling bond with him)	Meets romantic lead right away; heroine and romantic lead are soul mates or "bonded"; heroine/lead have instant connection; romantic lead has dark secrets; "bad boy with a good heart"; dangerous for heroine/lead to be together
35(d) (romantic lead is "dangerous supernatural being" and there is "supernatural war" among factions, yet heroine drawn to romantic lead)	Romantic lead has dark secrets; "bad boy with a good heart"; romantic lead is powerful supernatural creature; dangerous for heroine/lead to be together; rival houses / supernatural war; supernatural creatures; magical creatures forbidden to mix
35(e) (heroine kidnapped by vampire wanting to resurrect dead mate and seeking vengeance)	Heroine is kidnapped; vengeance for death of loved one
35(f) (heroine "turns out to be a unique supernatural being" but is in danger with others "seeking to destroy her")	Heroine is supernatural; heroine initially thinks she's a normal human; supernatural creatures
35(g) (at end of book "Bloodletter character turns into a raven" and flies away)	Not a trope I identified but see significant inaccuracy discussed below.

Moreover, Reiss's highly generalized descriptions of the works in this paragraph are misleading and overlook the very sort of expressive details that distinguish the works. Here are several examples.

35(a). Here, Reiss claims that in both books, "[a] girl approximately seventeen years old from San Diego comes to Anchorage, Alaska after an accident kills her family members." (Reiss ¶ 35(a).) This is misleading and overstates the claimed similarities in many respects.

First, arriving in Anchorage when one arrives in Alaska is not remarkable—it is Alaska's largest city with its largest airport and the natural place where one would fly to from far away. And of the two books, only *BMR* is actually set in Anchorage. After Grace in *Crave* lands in Anchorage at the beginning of the book, she flies via puddle jumper to Healy, Alaska, and then is immediately taken (by her cousin, via snowmobile), to remote Katmere Academy in the Denali mountains, where the main story takes place. Moreover, while Grace is brand new to Alaska at the start of *Crave*, Anna in *BMR* has been living in Anchorage for almost ten years after moving to Alaska when she was seven years old. (See *BMR* 2011 p. 124; *BMR* 2013 pp. 84-85.)

Reiss's claim that both heroines are "from San Diego" is also misleading and overstated. Freeman mentions that Anna previously "lived in San Diego" in a single sentence in *BMR* 2011.

(*BMR* 2011 p. 124.) San Diego is not even mentioned in *BMR* 2013, which briefly states only that Anna previously “lived in California.” (*BMR* 2013 p. 14.) Further, San Diego/California is only a minute detail in *BMR*; it is briefly mentioned, never explored, and simply not a major plot device or characteristic of Anna.

By contrast, Grace being from San Diego is a major characteristic of hers, used by Wolff repeatedly to draw contrast between the life she left behind and her new existence in remote Alaska, to illustrate Grace’s culture/climate shock and trouble adjusting. (See, e.g., *Crave* pp. 51 (“Back home, I’d go for a run when I couldn’t sleep, even if it was three in the morning. But here, that’s out of the question. Not just because it’s as cold as death outside but because God only knows what wild animal is waiting for me in the middle of the night.”); 248-249 (Back home, I was always outside—in the pool, at the beach, running through the park. I even did my homework on the front porch swing, watching the sun set over the water. Going from that to being stuck inside almost all the time is more than a little rough.”).)

In summary, even if having a character move from San Diego to Alaska were an original idea of Freeman’s (and it is not), the *way that idea is used and expressed* in the works is completely different.

Reiss also uses the vague phrase “family members” to gloss over the fact that in *BMR*, only Anna’s father is dead—her mother is living and a central character. In *Crave*, both of Grace’s parents are dead. Reiss also claims that in both books, the heroine’s “last words with her family members were in a fight and she feels guilty.” (Reiss ¶ 35(a).) *BMR* does not indicate that Anna had angry words with her father before he died, and Reiss provides no citation.

35(b). Here, Reiss states that each heroine “now lives with the only two family members she believes she has left, and they are both supernatural witches, which she doesn’t know because she’s been kept ignorant of the supernatural world by her family.” (Reiss ¶ 35(b).) This obscures that in *BMR*, Anna lives in her private family home with her own mother and her aunt, while in *Crave*, Grace moves to a magical boarding school where her uncle is headmaster and her cousin Macy is her roommate, and is unaware that the students aren’t human, nor is she. Reiss also fails to mention that in at least *BMR* 2013, Anna has not been “kept ignorant of the supernatural world,” but instead knows her mother and aunt are witches and that she isn’t fully human herself.

35(e). Reiss asserts that “[t]he heroine is kidnapped by a vampire who wants to bring back their dead mate and needs the heroine to do so.” As elsewhere, Reiss has stripped away the details of the storylines to make them sound more similar than they actually are. While Anna is violently attacked and abducted by thugs who are adult strangers working for either a vampire (*BMR* 2011) or an incubus (*BMR* 2013), Grace is drugged and restrained by a fellow classmate who has befriended her for devious purposes.

Reiss continues, “the heroine will become the *reincarnation* of his dead mate/will be used to *resurrect* her dead mate.” But rather than being original concepts developed exclusively in *BMR*, resurrection and reincarnation are essential religious and spiritual beliefs that have inspired countless storylines and concepts in many genres, including fantasy, science fiction, and paranormal novels.

Moreover, Reiss treats these two scenarios as the same circumstance, when they are in fact quite different. Becoming the reincarnation of a dead mate is different than being used in a ritual to resurrect someone else. Even the two drafts of *BMR* feature completely different scenarios for this event. In *BMR* 2011, Julian is a vampire who believes that Anna is the reincarnation of his dead wife, and he wants to bite her to restore her memory and resume their relationship. While in *BMR* 2013, Julian is an incubus who wants to force Anna to marry him for all eternity to get revenge against her mother. In both versions of *BMR*, Julian's plans fail, and Anna is not the reincarnation of his dead wife, after all. In *Crave*, the main antagonist to that point (Lia) performs a specific arcane ritual to literally resurrect Hudson (who Lia believed was her dead mate, even though they had never actually bonded to each other). After his resurrection, Hudson becomes a major character and part of a love triangle that carries over into future books in the series.

35(g). Here, Reiss claims that “[a]t the end of the book, the Bloodletter character turns into a raven / winged creature and flies away.” This is misleading on several levels.

First, while both books contain a character referred to as the “Bloodletter,” the two characters are not parallel, as explained in Section II.I.5 below. Further, calling a character “the Bloodletter” is not an original idea. Many other books have used it, including J.R. Ward’s best-selling vampire series *Black Dagger Brotherhood*, specifically in book 5, *Lover Unbound* (published 2007), *The Bloodletter’s Daughter: A Novel of Old Bohemia* by Linda Lafferty (2012), *Bloodletter (Star Trek: Deep Space Nine)* by K.W. Jeter (2000), and *Bloodletter* by Warren Newton Beath (1994). Similarly, supernatural characters turning into bats, birds, or other “winged creatures” is also classic genre trope. For example, everyone knows that vampires turn into bats—it is among the most common vampire characteristics.

Second, in using the misleading phrase “end of the book,” Reiss fails to point out that she is not comparing what happens in the final scenes of *BMR* and *Crave*, but rather comparing the final (or near-final) scene of *BMR* to exclusive bonus content appearing as an extra reward for readers at the end of the published *Crave* book, after the story has concluded. These bonus chapters do not propel the story forward in any way, but merely retell previous scenes, this time through Jaxon’s perspective. After the *Crave* story concludes on p. 532, Wolff introduces these “exclusive” additional chapters with the following message on p. 533:

But wait—there’s more!

Read on for an exclusive
look at three chapters from
Jaxon’s point of view.

Nothing will ever be the same...

The last of these bonus chapters takes place much earlier in the story. Jaxon is distraught after he lost control and caused an earthquake during his and Grace's first kiss, causing glass to shatter and injuring Grace (see full analysis of this chapter in Section II.F below). He seeks guidance from the Bloodletter, his "mentor" and "[t]he most vicious and powerful vampire in existence." (*Crave* p. 563.) After their conversation the Bloodletter "takes another step back, transforming into a winged creature I don't recognize right before my eyes" and "then she flies away, leaving me with the answer I sought and a host of questions I don't have a clue how to even ask." (*Crave* p. 570.) Here is the relevant snippet from p. 570:

"Thank you," I tell the Bloodletter, shoving the paper deep into my pocket.
 "You're welcome, my sweet boy." This time when she lifts her hand, it's to pat my cheek. "I do love you, you know."
 "I know," I agree, because in some strange way, it's true.
 "And if even a crusty old vampire like me can love you, I'm pretty sure a girl as strong as Grace can, too." She winks at me before dropping her hand and stepping away. "Besides, you're forgetting one thing."
 "What?" I ask, a tiny flare of hope kindling to life inside me despite my best efforts.
 "'There are more things in heaven and Earth, Horatio, / than are dreamt of in your philosophy.'" She takes another step back, transforming into a winged creature I don't recognize right before my eyes.
 And then she flies away, leaving me with the answer I sought and a host of questions I don't have a clue how to even ask.

Reiss does not cite any draft of *BMR* to indicate which scene she is referring to when discussing "the end of the book." But it appears that she is discussing a scene that occurs in the final chapter of *BMR* 2011 and the third-to-last chapter of *BMR* 2013. The *BMR* scene is nothing like the peaceful conversation scene in the bonus chapters of *Crave* where Jaxon seeks guidance from his vampire mentor. Instead, Anna is confronted by a "druid" named "Ronan Faolain" (referred to elsewhere in *BMR* 2013, but not in this scene, as "Ronan the Bloodletter" or "Chief Druid, Ronan the Bloodletter"). (*BMR* 2013 pp. 107, 244.) Ronan is cagily threatening Anna when Ash suddenly and angrily "bursts out of the woods, a low snarl ripping from his throat." (*BMR* 2013 p. 453.) Ash proceeds to shapeshift into a bear and launch himself at Ronan to bite his neck, but Ronan in turn shapeshifts into a flapping raven to escape the bite, before flying off. Here is the relevant snippet from *BMR* 2013 p. 454:¹

¹ While these excerpts alone are enough to see how misleading Reiss's claimed similarity is, I have also provided the full chapters (chapter 45 of *BMR* 2013 and a Jaxon chapter entitled "If You Want to Feel Better, Never Ask an Evil Vampire a Question" side by side on pp. 1-13 of the Appendix.

Ash launches himself forward, shifting into the bear and closing what should be an impossible distance in less than a breath. He bellows his fury, his mouth stretched open to an impossible angle, a gaping maw of terrible, gnashing teeth and righteous indignation. Just as his powerful jaws are about to snap around Ronan's neck, the air shimmers and Ronan—disappears. A raven circles around Ash's head one time before flapping his great wings and taking off into the night sky, blue-black feathers illumined by the pale moon.

Ronan is the raven?

I'm a bigger fool than I thought.

In summary, calling a character “the Bloodletter” is not a unique idea, and having a supernatural character turn into a “winged creature” (such as a vampire turning into a bat) is a classic genre trope, expressed in completely different ways.

Scrutinizing ¶ 35 alone shows that Reiss's analysis of “qualitative similarities” is misleading and cannot be trusted. Similar issues are found throughout Reiss's report.

B. Paragraph 36: Main Characters

In ¶ 36, Reiss claims that there are notable similarities as to “THE HEROINE and her SITUATION” in the two books. I discuss major differences between Grace (*Crave*) and Anna (*BMR*) throughout this report, so will only address a few specific points here.

Virtually everything Reiss describes in ¶ 36(a) and (b) (and also the last two bullets of (d)) can be traced back to common genre tropes explored in my opening report. These include: “supernatural heroine”; “heroine initially thinks she's a normal human”; “heroine has supernatural family”; “death of parents”; “lives with surrogate parents” “heroine is a teenager”; “heroine is new in town”; “heroine doesn't feel attractive or special”; “heroine experiences anxiety, depression, or panic attacks”; “heroine loves books/is a good student,” “chosen one”; and “supernatural school.” (Easton Rep. pp. 5-8.) As I showed, many other YA Paranormal Romance books have employed these same tropes. They are not original to Freeman and are expected in this genre.

Second, even Reiss acknowledges that her analysis is limited and flawed. For example, she concedes that the schools the protagonists attend are in fact “very different” (Reiss ¶ 36(c)) and that certain supposedly common “vivid descriptions” are actually “small in terms of plot” (Reiss ¶ 36(d)). In particular, the heroine calling herself “a ‘Dork’” is not a “vivid description” as Reiss claims—it is a common expression and expected given use of the trope “heroine loves books/is a good student.”

Most importantly, Grace and Anna are not nearly as similar as Reiss claims. They have different personalities, different appearances, and extremely different stories. Below are just a few major differences that Reiss ignores:

Anna (<i>BMR</i>)	Grace (<i>Crave</i>)
Mother is alive and major character.	Both parents are dead.
Has a strained relationship with her mother, which is a recurring issue.	Remembers her parents fondly and is nostalgic about her happy childhood memories and prior life in San Diego.
Father died in an elevator accident (<i>BMR</i> 2011) or airplane crash (<i>BMR</i> 2013) when she was 7.	Both parents recently died in car crash, right before the start of the story; later revealed that antagonist Lia caused the crash and murdered them as part of her plot to lure Grace to Katmere Academy to use her in a spell to resurrect Hudson.
Aware from beginning of supernatural world and that her mother and aunt are witches.	Doesn't know of supernatural world at first.
Attends a normal public high school where almost all students are humans in Alaska's largest city, Anchorage.	Attends a remote supernatural boarding school, which is acknowledged by Reiss to be "very different." Katmere Academy is no normal public high school; it is located in the Denali mountains and populated by vampires, dragons, werewolves, and witches (initially unbeknownst to Grace).
Has been living in Alaska since age 7; is deeply familiar with Alaskan life and comfortable in her surroundings.	Moves to Alaska at age 17 and struggles to adjust to both the climate and her surroundings.
Lives in a private family home with her mother and aunt.	Lives in a dorm room with her cousin (who she hasn't seen in years) at the remote magical boarding school.
Has dark, long, layered hair.	Has short, curly, auburn hair, and freckles.
Lacks self-confidence and considers herself fashion challenged.	Has a snarky and feisty personality; is quirky, funny, sarcastic, selfless, and sometimes stubborn.
Loves Tarot cards and practices Tarot readings.	Doesn't have anything to do with Tarot cards.
Has prophetic dreams and visions that often come true, a major plot of the story.	Doesn't have prophetic dreams/visions.
Is a witch (<i>BMR</i> 2011) or the "Nyx" (<i>BMR</i> 2013).	Is revealed at the very end of <i>Crave</i> to be a "gargoyle" (a rare supernatural creature) and that she is the queen of her people.

C. Paragraph 38: "Gleaming Gemstones"

This is a great example of Reiss skewing the respective plots and storylines of *BMR* and *Crave* to attempt to portray alleged similarities that do not exist. Reiss claims here that "[e]ven the

unique detail of unusual décor that Freeman invented of *gleaming gemstones on the walls* is mirrored throughout Wolff's books in several places." (Reiss ¶ 38 (citing e.g. *BMR* 2011 p. 210 and *Crave* pp. 238-239).) This is a remarkable distortion for many reasons, including the fact that the words "gleam" or "gleaming" do not even appear on p. 210 of *BMR* 2011 as Reiss claims.

Moreover, the authors are describing different things, and at different levels of detail. On p. 210 of *BMR*, Freeman describes the appearance of Anna's mother's bedroom, noting that the artwork on the walls contains "splashes of color made from gemstones." Contrary to what Reiss claims, there is no detailed description of "unusual décor" (there's nothing unique about a carved wooden bed with ornate bedding or sparkling artwork) and no mention of "gleaming gemstones on the wall." Instead, and while this is not entirely clear, it appears that the "gemstones" in question are either painted on canvas on wall art or are otherwise embedded in the art canvas.

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and wanted to stay that way. Underneath it all though, I was angry at both of them for all of the secrets and the lies between us. But now wasn't the time for confrontation. Dutifully, I padded over to the large four-posted bed. It was a beautiful thing of glazed, gilded wood, the color of warm, rich honey. It looked just like the sort of bed Sleeping Beauty might have slept in waiting for her prince to find her and break the spell—the wood carved with curlicues and fanciful swirls. My mother's bedding was done in soft pastels with threads of gold woven through the material and matching throw pillows to contrast and compliment the duvet. Her art decorated the walls as it did in so many rooms throughout our house—splashes of color made from gemstones, sparkling and catching the light painted on canvas in a way I'd never seen anyone else duplicate.

On pp. 238-239 of *Crave*, Grace has just been shown an underground tunnel that Katmere students take as a shortcut between classrooms. Wolff describes the surroundings in more vivid detail, conveying Grace's surprise and awe. Among other points, she describes how the tunnel walls are literally made up of different kinds of "colored stones," wondering whether the colored rocks are embedded gemstones. She separately describes wall art: "bone-like sculptures" evoking the Paris catacombs. That is very different from the light and colorful paintings in Anna's mother's bedroom. The pages from *Crave* that Reiss cites (pp. 238-239) are placed side by side with the *BMR* 2011 gemstone description scene (p. 210), on pp. 14-15 of my Appendix.

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c r a v e

We're moving fast through the tunnels now, so I don't get to check them out the way I really want to. Still, the recessed lighting, dim as it might be, gives me at least a decent view of where I'm walking. And I have to say, terrifying entrance notwithstanding, these things are freaking *cool*.

The walls are made entirely of different-colored stones—mostly white and black, but there are colored stones, too. They gleam red and blue and green even in the faint light, and I can't help reaching out to touch one of the bigger ones, just to see what it feels like. Cool, obviously, but also smooth, polished, like a gemstone. For a second, I wonder if that's what they are.

TRACY WOLFF

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But then I dismiss it as ridiculous, because what school (even a fancy, rich one like Katmere Academy) has the money to embed gemstones in the walls?

The floor is made of white brick, as are a bunch of the columns we pass as we walk. But what really gets me is the art that is down here—bone-like sculptures embedded in the walls, hanging from the ceiling, even resting on pedestals in various alcoves along the way.

It's an obvious homage to the Paris catacombs, where seven million skeletons are laid to rest—or used for macabre decorations throughout. And I can't help wondering if the school's art classes added the “bone” sculptures to the tunnels here. I also want to know what art supplies the bones are really made of.

Reiss also claims that Wolff stole Freeman's idea of using decorative gemstones in the later books *Crush* and *Covet*. The pages of those books that Reiss cites (p. 91 of *Crush* and pp. 172-173 of *Covet*) are placed side by side with the *BMR* 2011 gemstone description scene, on pp. 16-20 of my Appendix. Noticeably, the word “gleam” does not appear in these passages of *Crush* or *Covet*. Here again, the descriptive language and scenes themselves are completely different from Freeman's work.

For example, in *Crush*, Grace and her friends are visiting Flint's family in New York, and since they are dragons, their incredible treasure hoard is a very important element of the story, of their home, and of their traditions. On this page, Grace is describing a hidden passage with walls

lined with gems. Wolff describes the walls as “made of large and craggy black stones”; “randomly placed amid the rocks are beautiful crystals and jewels in all the shades of the rainbow and then some.” (*Crush* p. 91.) Wolff goes on to intricately describe the different colored stones, describing the tunnel as being lined with “[e]meralds and opal and sunstones and tourmalines... The list goes on and on.” (*Id.*) Freeman’s descriptions of the art in Anna’s mother’s room are very different, as shown in the Appendix. And this tie between dragons and their treasure hoard is both integral to the world created by Wolff a common trope about dragons that has no correlation to the description Reiss has cited in *BMR*.

Similarly, in the portion of *Covet* that Reiss cites, Grace is describing Hudson’s room in the basement, and the incredible décor, artwork, books, and architecture in the space. Out of two full pages of description, the only text that refers to gemstones is “Or lust after the gorgeous jewels—some as big as grapefruit—that are embedded in the arches and used to separate the different scenes.” (*Covet* pp. 172-173.) While this scene and the *BMR* scene both include a description of a bedroom, that is where the similarity ends. Anna’s mother’s room is a typical bedroom in a private home, with artwork on the walls that include a depiction of gems. Hudson’s room is an elaborate undercroft, running the entire length of a castle, filled with thousands of books, elaborate wall carvings, photographic equipment, audio equipment, an axe-throwing area, a large sitting room, and a bedroom area large enough to fit a raised king-sized bed. The jewels are a very smart part of a richly imagined location and wholly unrelated to the painting in *BMR*.

In summary, there is nothing original about referencing gemstones to illustrate color and luxury as part of descriptive imagery and the authors use this concept in very different ways.

D. Paragraph 39: “Arrival In Snow/Setting”

Here, Reiss opines that “[e]arly in both Freeman’s manuscripts and in Wolff’s *CRAVE*, there is a scene of the heroine traveling through the snow.” (Reiss ¶ 39.) Of course, having to travel through snow in Alaska is not a unique idea. In books set in Alaska, it would be surprising if characters did *not* have to travel through snow.

Reiss appears to mostly be referencing a 2010 draft of *BMR* in this paragraph, which I did not review because I was told that it was not one of the two drafts that the plaintiff selected per the Court’s order. But Reiss says that the same scene appears in the 2011 draft that the plaintiff did select. I found the chapter I believe Reiss is referring to in the 2011 draft (where Anna is being driven home from school by Ash on his motorcycle) and have included it alongside the relevant chapter from *Crave* (where Grace arrives at Katmere Academy for the first time on a snowmobile driven by her cousin Macy). These are on pp. 21-36 of the Appendix (with the specific scenes beginning, respectively, on p. 55 of *BMR* 2011 and p. 12 of *Crave*). Reiss’s description of these very different scenes is inaccurate and misleading for at least the following reasons.

First, Reiss says both Grace and Anna are driving along snowy roads lined with trees, and the wind is cold and biting. This is only true when the details of the scene are stripped away and the text is interpreted at the most basic level. When reading these scenes with all the details and richness intact, the differences come fully into view and are extremely obvious. Anna in *BMR* is traveling with Ash (her male love interest) on a motorcycle on a well-traveled snowy road as he

takes her home from school. They are in a suburban setting starting with the school parking lot and then driving past many houses before arriving at her large private home. In *Crave*, Grace is traveling with Macy (her female cousin) on a snowmobile on a winding, isolated, rough trail through the woods with howls and roars of wild animals in the distance, on the last leg of her long journey from California to Katmere Academy. Then they veer off this trail, through a thicket of trees and onto a plateau on the side of the mountain, where the remote school is located. Importantly, the two scenes also serve very different purposes. The scene in *BMR* is a romantic device—Anna is alone with Ash, huddled up on his motorcycle. The scene in *Crave* is used to introduce the remote setting of Alaska and Katmere Academy (a common trope as I explained).

Reiss also mentions that the *BMR* romantic lead (Ash) lives in an “Old-World European chateau” and Grace lives at the school which is a gothic castle. First, she is comparing a character’s own large private home in the suburbs of Alaska’s largest city to a sprawling castle-like boarding school complex hidden within an isolated mountainous location—not the same. Second, the gothic look of both locations ties into the common trope of “Gothic Architecture/Castle Setting” discussed in my opening report.

Reiss highlights that each character compares Alaska to “living on the moon.” This is unremarkable given Alaska’s remote location—and also ties into the “remote location” trope. Also note Reiss’s use of ellipses and that these quotes are not actually identical as she attempts to show. Here are excerpts of these quotes with greater context, from p. 274 of *BMR* 2011 and p. 34 of *Crave* (see also Appendix pp. 37-38):

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Windows overlooking the inlet provided breathtaking views from every vantage point, yet it was still pitch black outside, the stars flickering brightly in the black, morning-night sky. I’ve always felt that winter in Alaska must be like living on the moon—at least the way it looks in pictures—all white powdery stuff on the ground but blackness and stars surrounding you from all sides.

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sympathetically before turning to Macy. “Make sure she takes a couple of Advil when she gets to your room. And that she drinks plenty of water. I’ll send up some soup and ginger ale. Let’s keep things light tonight, see how you’re doing in the morning.”

“Light” sounds perfect, since even the thought of eating right now makes me want to throw up. “Okay, sure.”

“I’m glad you’re here, Grace. And I promise, things will get easier.”

I nod, because what else am I going to do? I’m not glad I’m here—Alaska feels like the moon right now—but I’m all for things getting easier. I just want to go one day without feeling like shit.

Finally, the characters are expressing the idea of comparing Alaska to the moon in different ways and for different purposes. Anna is commenting on the natural beauty of Alaska, and literally comparing the white of the snow and view of the stars with what one might see from the surface of the moon. Grace is commenting on how distant and isolated she now is from human civilization and how being in this alien environment is making her feel discombobulated after her arrival in Alaska and whirlwind snowmobile trip through the wilderness to Katmere Academy. Again, even if comparing Alaska to “living on the moon” were an original idea (and it is not), the *expression* is starkly different.

E. Paragraphs 41-48, 57: Descriptions Of Romantic Leads

Here, Reiss catalogues purported “remarkable similarities between the romantic lead characters” (Reiss ¶ 41), largely based on the scenes when Ash and Jaxon are first introduced (Reiss ¶¶ 42, 46). Note up front that reducing this to a simple one-to-one comparison as Reiss does ignores an important nuance: while Ash is the only romantic lead in *BMR*, there are two romantic leads in the *Crave* series (Jaxon for book 1, until Hudson enters the picture leading to a love triangle). But even accepting Reiss’s flawed attempt to compare Ash to only Jaxon for the sake of argument, her analysis does not hold up. The easiest way to see why Reiss’s descriptions are misleading is to simply compare the scenes where Ash and Jaxon are introduced side by side. These are presented in Appendix pp. 39-57, beginning on p. 15 of *BMR* 2011 (continuing into the next chapter) and p. 21 of *Crave*.

Reiss again addresses the romantic leads’ descriptions and characteristics in ¶ 57, claiming: “The two romantic leads are the same type of boy; they look the same; they dress the same—even to the point that they wear designer clothing, they have similar powers and abilities and the need to hide them; they have suffered the same loss of an older brother for which they feel responsible; they are identically drawn to the heroine and yet must hide their enormous supernatural powers from her to keep her safe.” This is again Reiss’s own summary rather than anything direct from the books. Based on the works themselves, Reiss’s analysis is misleading and inaccurate on many levels. There are a lot of different details here, so I will break this into several sections.

Appearance. Reiss first claims that “They are the same type of boy; they look the same; they dress the same—even to the point that they wear *designer clothing*.” (Reiss ¶ 57.) But any similarities in Ash and Jaxon’s appearances flow naturally from the trope of them being dark, dangerous, attractive teenage boys with paranormal abilities, as discussed in my opening report. Such superficial similarities are not surprising given that both authors are writing in the YA Paranormal Romance genre.

And even a little scrutiny shows that the characters’ physical appearances are actually very different:

- Ash (and his twin sister) are said to have “rosy cheeks, red lips, and sun-kissed skin” and radiate “vibrant, good health.” (*BMR* 2011 p. 16.) Jaxon instead has “smooth, alabaster skin.” (*Crave* p. 21.) He is pale and has “a jagged scar from the center of his left eyebrow to the left corner of his mouth.” (*Crave* p. 30.) Importantly, Jaxon is a vampire and naturally needs to avoid the sun, so there is no way he could have “sun-kissed skin” like Ash does.
- Ash is described as “striking—bewitchingly good-looking,” “heart-stoppingly gorgeous,” like a “super model,” and with “compelling” “beauty.” (*BMR* 2011 pp. 15-16.) Jaxon is not described as traditionally beautiful. Instead, he is “the most intimidating guy I’ve ever seen.” He has “a jaw so sharp it could cut stone” and a prominent facial scar. There’s “something more to him, something different and powerful and overwhelming.” And he “has the kind of face nineteenth-century poets loved to write about—too intense to be beautiful and too striking to be anything else.” (*Crave* pp. 21, 30.)
- Ash’s eyes are “a most unusual shade of what I could only describe as amber.” (*BMR* 2011 p. 16.) Unlike Ash’s orange-yellow eyes, Jaxon’s black eyes are like a “bottomless obsidian that see everything and show nothing, surrounded by the longest, most obscene lashes I’ve ever seen.” (*Crave* p. 21.)
- Ash is “exceptionally tall” and has “large brilliant white teeth you’d expect to see in a toothpaste ad.” (*BMR* 2011 pp. 15-16.) Jaxon’s height and teeth aren’t mentioned, and anyway attractive male love interests are typically tall with good teeth.
- The two speak differently. Ash has a “smooth rich voice. If chocolate had a voice it would be his.” (*BMR* 2011 p. 17.) Jaxon’s voice is “low and rumbly.” (*Crave* p. 21.)
- Ash moves with the grace of his inner wolf—“feral,” almost “predatory,” and “sinuous.” (*BMR* 2011 p. 16.) He is wild, and his beauty is dangerous. (*BMR* 2011 p. 53.) But he doesn’t give off the kind of dark power that Jaxon does—as befits the differences between a wolf and a vampire. (See *Crave* pp. 21, 23.)
- Their attitudes are also different. While Ash’s beauty is compelling to Anna, he isn’t consciously doing anything to control or manipulate her, while Jaxon deliberately toys with Grace and traps her in his gaze, a classic vampire power. (*Crave* pp. 21-22.)

Reiss also overreaches in emphasizing that Ash and Jaxon “dress the same—even to the point that they wear *designer clothing*.” (Reiss ¶ 57.) Both wear black jeans and a t-shirt (on first meeting), but this is an unoriginal idea, especially when it comes to male teenagers. Black jeans and a black t-shirt (or very similar attire) are quintessential “bad boy” apparel, as shown in the following examples:

Edward Cullen in *Twilight*



Damon Salvatore in *The Vampire Diaries*



Jess Mariano in *Gilmore Girls*



Danny Zuko in *Grease*

Finally, there is nothing notable about attractive teenagers wearing “designer clothing.” The short-hand of “designer clothing” is an easy way to indicate a character is wealthy, appearance-conscious, and “cool.” And the claimed similarities in the clothing fall apart upon inspection:

- Ash in *BMR* (and his sister) arrive dressed in motorcycle gear: “black leather jackets, gleaming black helmets and leather chaps”; separately a “biker jacket” and “man-jewelry.” (*BMR* 2011 p. 119; see also pp. 222-23 (“street-chic”).)
- In contrast, Jaxon is debonair and wears black (and nothing but black), along with the rest of his vampire crowd. For example, from later in the book: “Dressed all in Gucci black—silk v-neck sweater, elegant pinstripe pants, shiny leather dress shoes—with his scarred eyebrow furrowed and his dark gaze as cold as the snow-covered ground outside, he shouldn’t look sexy at all.” (*Crave* p. 86.)

Powers. Reiss then claims that Ash and Jaxon “have similar powers and abilities and the need to hide them.” (Reiss ¶ 57.) This ignores a founding principle of the YA Paranormal Romance genre: virtually every romantic lead has some supernatural or magical power. It is the type of supernatural creature and the author’s interpretation of how those powers manifest that make each romantic lead special and different. But regardless, Reiss again misrepresents what the works themselves say about these characters’ powers:

- Ash is a Viking berserker, a werewolf, and a Sentinel—with classic werewolf shifter powers. He is just coming into his powers and is not yet able to control them fully.
- Jaxon is a vampire—and not just any vampire, but the heir apparent to the vampire throne and the most powerful vampire of his generation.
- Since Ash attends a public high school—where most students are humans with no knowledge of the supernatural world—Ash and his family need to keep their powers, and the entire battle between dark and light that is unfolding, secret.
- Because Jaxon attends a remote school where the entire student body is comprised of supernatural creatures, he has no need to hide his powers at all, until Grace arrives at the school and all the students are instructed by the headmaster (her uncle) to keep their powers secret from her. Unlike a normal public school where magic is hidden, Grace is the *only*

student at Katmere who does not know about students' magical powers at first. Once the truth is revealed to her (fairly early on), Jaxon and the others use their powers openly.

Loss of brother. Reiss then misleadingly claims that Ash/Jaxon “both suffered the loss of their older brothers and feel responsible for it.” (Reiss ¶ 57.) Note up front that Reiss ignores a major piece of this comparison: in a plot twist at the end of *Crave*, previously deceased Hudson is resurrected through a ritual performed by main *Crave* antagonist Lia. This is a huge component of the story that drives the plot of later books, and it is entirely absent from *BMR*, where Ash's dead brother has essentially no role. But regardless, by reducing this similarity to such basic language, all nuance and detail about the two scenarios are flattened and distorted. When the details are revealed, the losses are nothing alike.

- Ash's older brother died several years earlier when Ash was fourteen. His family was in the mountains of Peru on an archaeological dig, and his brother volunteered to return to the expedition's base camp to fetch needed tools. He never returns and is later found dead in a ravine. What caused his fall is a mystery. But regardless, Ash was not there and not responsible, beyond his displaced survivor's guilt leading him to think he should have been the one to go for the tools, or maybe if he had gone with his brother, he'd still be alive.
- Jaxon doesn't have to wonder about his older brother Hudson's fate because he is the one who has recently killed him. He did it because Hudson had been using his powers for evil. And only Jaxon was powerful enough to stop Hudson from taking over the entire supernatural world and bending them to his will. That's why this terrible task fell to Jaxon—he was the only one who could save everyone. Even though Jaxon feels guilty, since he loved his brother and knows that he has brought pain to his parents, Jaxon still believes that he did the right thing. There is also no mystery about how Hudson died, unlike the situation with Ash's brother.

Drawn to heroine. Finally, Reiss claims that Ash and Jaxon “are identically drawn to the heroine and yet must hide their enormous supernatural powers from her to keep her safe.” (Reiss ¶ 57.) This is true of most books in this genre. For example, Edward Cullen in the *Twilight* series is obsessively drawn to human heroine Bella and must hide the fact that he is a vampire from her. Daniel in *Fallen* needs to keep the fact that he is a fallen angel a secret from Luce, the human heroine he has been in love with throughout many lives. This is a common trope that is a hallmark of the YA Paranormal Romance genre, as fully explained in my opening report.

F. Paragraphs 49-54: First Kiss

Reiss also wrongly claims (in ¶¶ 49-54), that the “first kiss” scenes in the two books are similar. The complete chapters containing these scenes are provided on pp. 58-76 of the Appendix. The “first kiss” scene in *BMR* 2011 takes place on pp. 167-178 (across two chapters), with the kiss itself on pp. 172-173. In *Crave*, the first kiss occurs in chapter 34, with the kiss itself on pp. 270-271. Because greater context helps show how Reiss has distorted the works, I have also included: (1) the preceding scene in *Crave* (chapter 33), where Grace and Jaxon are outside on a parapet just below his bedroom window watching a meteor shower; and (2) ensuing scenes (from chapters 35, 39, and 40), where Grace awakens with a neck puncture wound and learns how she got it and the truth about the supernatural world. Any ordinary reader would find that Reiss's descriptions of

these scenes are inaccurate and the scenes themselves are completely different. Let's unpack some of the ways Reiss's descriptions are inaccurate:

1. Paragraphs 49-50: Description Of First Kiss

Reiss's descriptions of the "first kiss" scenes in ¶¶ 49-50 are a great example of her describing the works at a misleading and overly simplistic level to incorrectly assert similarity.

Reiss first says that in *BMR*, "the heroine first learns about the supernatural world and the romantic lead's place in it after the triggering event of their first kiss together." (Reiss ¶ 49.) This is very misleading. Anna in *BMR* knows of the supernatural world long before the "first kiss" scene. Anna is aware from the outset that her own family members are "natural-born witches" who practice "the Craft." (*BMR* 2011 p. 66 (regarding Anna's aunt: "She considers herself a natural-born witch and has told me since I was very young that we descend from a long line of such witches going back generation upon generation, women with special intuitive powers and gifted healers.")) Instead, what happens in the "first kiss" scene is that Ash's amber eyes glow, as Anna had been seeing in a troubling vision. While she is surprised that Ash is not human, what scares her is her fear that he may be demonic and the worry that her dark visions might be coming true.

Reiss also misleadingly states that it is "soon revealed that the romantic lead is a werewolf, and he believes the heroine is his mate and they are 'bonded' together." (Reiss ¶ 49.) These events actually happen much later in *BMR* than Reiss indicates. The "reveal" regarding Ash being a werewolf happens beginning on p. 228, in a different scene at a Barnes & Noble. This chapter is included on pp. 77-92 of the Appendix.

Reiss then references the idea of the heroine and romantic lead being "'bonded' together." (Reiss ¶ 49.) This is a genre trope as explained in my opening report. Also note that discussion regarding "bonded mates" happens hundreds of pages later, on pp. 423-424, not during the "first kiss" scene. (See Appendix pp. 93-96.) And importantly, the later *BMR* passage that actually addresses "bonding" does not claim that *Ash and Anna* are "bonded" or mates; in describing the concept, Ash is talking about two different characters ("Fi" and "Cousin Mac").

Reiss then claims that the first kiss in *Crave* "functions the same way," stating: "Grace learns about the supernatural world and that the romantic lead is a vampire, and then during their first kiss, Jaxon loses self-control. He causes an earthquake by accident with his powers. The heroine is frightened by the quake and this display of supernatural powers and runs from him. He catches her, and she later finds puncture marks on her neck. The next day she demands answers and wonders if he is an alien or a vampire. It is soon revealed that the romantic lead is indeed a vampire—one who believes the heroine is his mate and that they have a 'mating bond.'" (Reiss ¶ 50.) Since there are so many inaccurate assertions in Reiss's summary, I will break this down:

- Reiss's claim that Grace "is frightened by the quake and this display of supernatural powers and runs from him" is false. Grace doesn't initially connect the earthquake with Jaxon's powers at all. And she isn't afraid of the small earthquake or of Jaxon. Grace only starts to run away because Jaxon deliberately scares her into it to save her from an explosion of glass caused by the earthquake. All of this is on pp. 271-272 of *Crave* itself (Appendix pp. 70-71) and would be clear to any reader.

- Reiss distorts the works in claiming that Jaxon later “catches her, and she later finds puncture marks on her neck. The next day she demands answers and wonders if he is an alien or a vampire.” In the ensuing chapter of *Crave* (on p. 273), Grace awakens in her bedroom with bandages on her neck, face and shoulder and no memory of the events leading to this. (See Appendix pp. 72-75.) It is later revealed (on p. 319) that Jaxon *did not* bite her; he rather sealed a wound she had sustained from the shattering glass using his venom. Instead, it was the school nurse (Marise, also a vampire) who had bit Grace on her neck to allow her to access the torn artery and heal it. (See Appendix pp. 76.)
- Reiss’s claim that “Grace learns about the supernatural world and that the romantic lead is a vampire, and then during their first kiss, Jaxon loses control” is also inaccurate. Grace learns about the supernatural world and the fact that Jaxon is a vampire 43 pages after the first kiss, after Jaxon has run to the mountains to distance himself from Grace for her safety. Grace demands answers, and receives them, from her cousin Macy. (See Appendix pp. 77-92 (this chapter side by side with the *BMR* chapter where Ash himself reveals to Anna that he is a shapeshifting werewolf).)
- The same goes for Reiss’s claim that “[i]t is soon revealed that the romantic lead is indeed a vampire—one who believes the heroine is his mate and that they have a mating bond.” As just shown, the reveal of Jaxon being a vampire happens in a different scene later in the book. As to “a mating bond,” this concept only comes up in *Crave* much later in the book, where a different character (Lia, the main antagonist of book 1) briefly discusses the concept while essentially torturing Grace as part of a scheme to bring Lia’s own love interest that she considers her mate (Hudson) back from the dead. This is clearly shown on *Crave* pp. 484-486. (Appendix pp. 93-96.)

2. Paragraph 51: “An Alien”

In ¶ 51, Reiss asserts that Freeman and Wolff both have the heroine wonder or ask if the romantic lead is “an alien.” This occurs on p. 193 of *BMR* 2011 and pp. 260-261 of *Crave*, included in chapter excerpts on pp. 97-100 of the Appendix. Those scenes are completely different as shown in the works themselves. And while Reiss sees the use of the two-word phrase “an alien” as a remarkable similarity, this is not unusual. In *BMR* 2011, once Anna realizes that the romantic lead may not be human (which is reasonable given that she comes from a family of witches and is aware of the supernatural world), she considers many different supernatural possibilities, ranging from “vampire or a werewolf” to “just a freak, alien or monster of unknown.” (*BMR* 2011 p. 193.) Grace is merely flirting with Jaxon when she asks if he’s “an alien”—because of his imperviousness to the cold and his unbelievable good looks. At this point in *Crave*, Grace is still unaware that Jaxon is a vampire and that all the students at Katmere Academy are paranormal creatures. (*Crave* pp. 260-261.)

3. Paragraph 52: Kiss Setting

Reiss incorrectly says that in both stories, “the heroines and romantic leads first kiss outdoors under a dazzling night sky—lit with the Northern Lights in Freeman’s story and lit with a meteor shower in Wolff’s.” (Reiss ¶ 52 (citing pp. 132-136 of *BMR* 2011 and pp. 263-272 of

Crave).)² These full scenes are included on pp. 58-76 of the Appendix so that readers can see for themselves how the concepts, context, wording, voice, and tone differ. I offer the following observations:

First, while it is true that *BMR* shows Ash and Anna's first kiss outside under the Northern Lights, and *Crave* has a scene outside watching a meteor shower (but before the first kiss, not during it), that doesn't mean the two scenes are similar. There's also nothing unusual about two different books set in Alaska including night sky phenomena to enhance an emotional scene. The fact that they are not the same night sky phenomena makes them even less similar.

Beyond that, there are many details in the two scenes that enhance the differences between the two stories:

- In *BMR*, the kiss happens under the Northern Lights, outdoors. Although Anna says the weather was unseasonably cold for Halloween, she barely feels the cold, even though the only protection is Ash's arm around her shoulders. It was her idea for Ash to take her to the Bluff to watch the Northern Lights. While they are watching the lights, he tells her about his family rules that preclude him dating, and that his parents believe he doesn't have enough self-control. They want him to wait six months before starting to date her. Anna is happy that Ash had told his parents he wanted to date her. He swears he would never hurt her, and then kisses her on p. 172. Then, after another kiss, Anna becomes frightened because Ash's eyes remind her of a vision (p. 173).
- In *Crave*, the meteor shower and first kiss scenes take place between pp. 259 and 272. Jaxon has prepared for this meteor shower viewing as a surprise to Grace. On p. 259, he has a heavy red blanket and faux-fur-lined gloves for her to wear—then they jump out his tower window three feet to the parapet below. Jaxon wraps her up in the blanket and they stay out there for a half hour, watching the sky show. Watching the meteor shower brings Grace a deep sense of peace and relief from her grief. When Grace thanks Jaxon for bringing her out to see the meteor shower, he feels unworthy of her. Grace's feelings toward him only deepen. Jaxon has been trying to hide his feelings, but finally, they peek through. This doesn't frighten Grace. It gives her courage to move closer to him.

As noted above, the actual first kiss in *Crave* takes place inside, after the meteor shower is over, and after Jaxon "flies" Grace back up to his tower room, so she can warm up. She keeps stepping closer to him and breaks through his defenses. As shown on pp. 267-270, their kiss is a hard-won moment of deep emotional connection. Then on p. 271, as their kissing grows more passionate, Jaxon loses control and causes an earthquake, unbeknownst to Grace. She is not afraid of this, and she is not afraid of him—even though he is afraid of himself. Ultimately, Jaxon chases Grace away from him to try to save her from physical harm. And when he is unable to prevent the damage, he saves her life. See above (Section II.F.1) for the details of the way he saved her, and the aftermath.

In summary, even though one scene takes place under the Northern Lights and the other takes place after watching a meteor shower, these scenes are not similar. In *BMR*, the kiss happens *outdoors during* the "light show"; in *Crave* it happens *indoors after* the "light show." In *BMR*, the

² For clarity, my version of *BMR* 2011 shows the first kiss scene on pp. 167-178, with the kiss itself on pp. 172-173.

characters' emotional connection is not as intense as the connection for the characters in *Crave*. In *BMR*, Anna becomes fearful of Ash when she sees him lose control, while in *Crave*, Grace does not fear Jaxon—until he deliberately tries to scare her to get her to move out of danger. Again, readers can understand this for themselves from simply reading the actual scenes from the two books, as included on pp. 58-76 of the Appendix. My own observations merely illustrate how Reiss's descriptions are overly simplistic and misleading. And in the end, it is a big stretch to claim that a kiss scene in a romance novel makes two books similar.

4. Paragraphs 53-54: PDA/"Melting"

Similar issues continue in ¶¶ 53-54. Reiss says that "Freeman's heroine wonders if the romantic lead's parents will object to their 'public display of affection'" and that "[s]he melts into him when they kiss." (Reiss ¶ 53 (citing *BMR* 2011 pp. 418, 481).) Reiss then contends that the same occurs in *Crave*, stating: "Wolff's heroine, Grace, says she's never been into 'PDA' before and the romantic lead has her breaking all the rules. She melts against him when they kiss." (Reiss ¶ 54 (citing *Crave* p. 524).)

Discussions about public displays of affection—or "PDA," which is more likely how a teen would phrase it—happen in most relationships at that age. Navigating each person's PDA comfort level is part of the early days of any teen relationship (and even many adult relationships as well), so it is hardly surprising that this would appear in two romance books involving teenagers.

Nor is saying someone "melts" after a kiss unique language. In fact, a popular song called "I Melt With You" by the band Modern English came out in 1982 and has appeared in a 1983 teen movie *Valley Girl*, the kid's movie *Sky High* in 2005, the adult comedy *50 First Dates* in 2004, *Not Another Teen Movie* in 2001, and more recently in season 1 of *Stranger Things* in 2016. The concept of "melting" as a metaphor for falling for somebody is used commonly by many people in real life, in books, in songs, in movies, and even in commercials, and is not unique to Freeman.

The idea of "melting" is also expressed differently. In *Crave*, after repeatedly retreating from Grace's prior advances, Jaxon finally admits he has feelings for her. That emotional admission (and the gratitude she feels for him giving her the grief-healing experience of watching the meteor shower) is what causes Grace to "melt," not the kiss—which hasn't even happened yet. This is all clear on *Crave* pp. 269-270 (Appendix pp. 68-69).

G. Paragraphs 55-58: Additional Claims Regarding Romantic Leads

Reiss makes a number of brief and vague claims in ¶¶ 55-56, including asserting without explanation that Wolff's books "echo" Freeman's, the books have "the same details," and that there are unspecified "parallels." These claims are impossible to assess because they only consist of Reiss's own vague observations without specific references or examples.

In ¶ 58, Reiss states: "Both leads need to bite the heroine to save her from bleeding to death after being attacked. While vampires and werewolves biting people is a genre convention, it is the medicinal nature of the bites and that saliva has coagulating properties that speed healing." This is yet another distortion. I have again provided the full scenes themselves on pp. 101-120 of the

Appendix. These scenes are in chapters 38-39 of *BMR* 2011 and 47-48 of *Crave*. The romantic leads' bites begin on p. 404 of *BMR* 2011 and p. 376 of *Crave*, but the entire scenes are needed for context. Let's unpack this:

First, I agree that both romantic leads do bite the heroines at points in their stories, but this is not surprising considering that these characters are a vampire and a werewolf and a heroine being bitten by such creatures is a classic YA Paranormal Romance trope. Even Reiss acknowledges that this is a "genre convention." (Reiss ¶ 58.)

Second, as the scenes themselves show, Reiss's claim that both heroines are bitten "to save her from bleeding to death after being attacked" is false. That appears true of *BMR*, where Ash has bitten Anna to save her life and heal her after she battled a 'buidseachd' demon. (*BMR* 2011 pp. 409-410.) But the scene in *Crave* is nothing like that. In *Crave*, Jaxon bites Grace for pleasure after she seduces him and encourages it. (*Crave* pp. 370-379.) Rather than a rescue scene, the scene in *Crave* illustrates Grace's acceptance of what Jaxon is and moves their relationship forward.

Third, the descriptions of the bites themselves are also very different. In *BMR*, Anna blacks out after Ash bites her and later awakens in a car. In *Crave*, Grace fully experiences the bite as an overwhelming sensual experience, vividly described in lush detail (compare beginnings of chapters 39 of *BMR* and 48 of *Crave*). While both books use the two-word phrase "molten honey" (in *BMR* to describe Ash's eyes and in *Crave* to describe the pleasure coursing through Grace during the bite), that is literally the only similarity among the two vividly different sets of chapters.

Fourth, neither bite scene features "saliva [that] has coagulating properties that speed healing," as Reiss claims in ¶ 58:

- In *BMR*, the medicinal saliva comes from a *vampire* bite from a different character (Julian) biting a different side character (Rachel). This appears hundreds of pages later in *BMR* 2011, on pp 532-333.
- In *Crave*, the school nurse (Marise, a vampire), not Jaxon, is the one who bites Grace to save her. This is not even directly narrated in the book, but rather revealed to Grace by a different character (Macy) after the fact, on p. 319 (Appendix p. 76).

And of course, the concept of the healing qualities of a vampire bite or vampire blood appears elsewhere in pop culture and vampire lore. In the *Twilight* series, Edward Cullen bites Bella and sucks the venom from her body in order to heal her. In the *Vampire Diaries* series, vampire blood can heal a human. And in the TV show *True Blood*, vampire blood—sold on the black market as "V"—has many sought-after properties, including healing. In short, this concept has been omnipresent in vampire lore and in pop culture both before and after *BMR* was written, and therefore cannot be a notable similarity here.

H. Paragraphs 59-60: Northern Lights

Here, Reiss again raises the supposed similarity of backdrops of Northern Lights. As I explained, it is not unusual for stories set in Alaska to include the Northern Lights as a backdrop. They are one of the most defining elements of the long nights in Alaska and many people aspire to see them.

And here again, Reiss’s various comparisons are not apples to apples. Earlier, in ¶ 52, Reiss erroneously compared the first kiss in *BMR* 2011 under the Northern Lights to a scene in *Crave* that precedes the first kiss, where Grace and Jaxon share an intimate moment on a parapet watching a meteor shower, but do not kiss. I addressed that in Section II.F.3 above.

Now, Reiss incorrectly compares the “first kiss” scene from a different version of *BMR* (the 2013 Draft) to a totally different scene in *Crave* that occurs hundreds of pages after the first kiss. The full chapters encompassing these particular scenes (chapter 17 of *BMR* 2013 and chapter 54 of *Crave*) are included side by side on pp. 121-131 of the Appendix. I offer the following additional observations:

Reiss claims that both heroines “barely feel the cold” (Reiss ¶ 59), but this ignores all context. To see how different the contexts really are, readers can simply look at where they appear on p. 153 of *BMR* 2013 and p. 438 of *Crave* (Appendix p. 122). Also, two characters stating that they temporarily do not feel cold because they are awestruck by the Northern Lights in novels set in Alaska is a generic idea that flows naturally from the setting, not a notable similarity.

Reiss then claims that both authors describe the Northern Lights as follows: “[t]he ‘purple’ and ‘green’ colors ‘swirl’ across the night sky” and that both heroines describe it as “a ‘light show.’” (Reiss ¶ 59.) Respectfully, anybody would describe the Northern Lights that way. To illustrate this, here is a picture of a view of the Northern Lights in Alaska:³

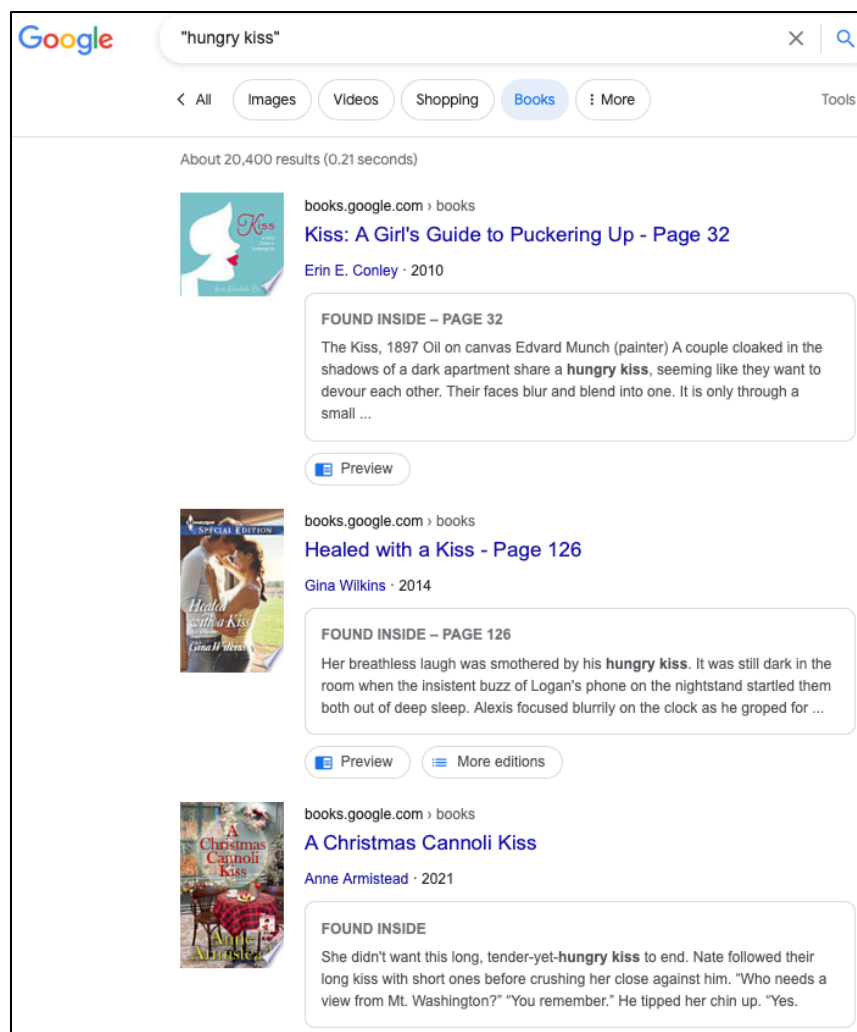


Reiss then claims that “[t]here is a ‘hungry’ kiss” in both scenes.” (Reiss ¶ 59.) But “hungry” is Reiss’s word; it is not used in either book, as Reiss acknowledges. And the context for these kisses is very different. This is Anna and Ash’s actual first kiss in *BMR*. In *Crave*, this particular kiss occurs much later in the book, long after Grace and Jaxon had their first kiss and have a much stronger emotional connection at this point in their story. For this reason, the scene

³ <https://travel.usnews.com/features/the-best-times-and-places-to-see-the-northern-lights-in-alaska>.

revolves around their love growing against the backdrop of the romantic night sky, not just the excitement of a first kiss. While *BMR*'s language includes "hunger" and *Crave* mentions Jaxon "starving" for Grace, one book focuses on *physical* passion, the other on deepening *love*.

Also, sharing a "hungry kiss" is a ubiquitous trope in romance literature; Freeman did not invent it. A Google Books search for the phrase shows about twenty thousand hits, the first several of which are as follows:⁴



Finally, in ¶ 60, Reiss says that "[i]n Freeman's work, the heroine and romantic lead have just come from the school dance to view the Northern Lights, and in Wolff's work, the heroine and romantic lead dance under the Northern Lights." This is again very misleading. In *BMR*, the characters have just come from a literal high school dance. In *Crave*, Grace and Jaxon are floating 100 feet above the parapet as he uses his powers of telekinesis to levitate them up into the sky. They are not literally dancing as Reiss claims, but rather "dancing and floating and spinning" among the spectacular lights. It's an incredibly romantic moment and important for their evolving relationship. As the scene progresses, Jaxon resists Grace's request to kiss her so he can give her

⁴ Visit books.google.com and search "hungry kiss" (showing 20,400 results as of the date of this report).

a stunning mystic topaz pendant that captures the colors of the aurora. Only then does he kiss her—and eventually bites her too, out of passion. All of this is clear from *Crave* itself, on pp. 440-441 (Appendix pp. 124-125).

I. Paragraphs 61-67: “Other Parallel Characters”

In ¶¶ 61-67 (and elsewhere including ¶ 34), Reiss claims that there are “other parallel characters” in *BMR* and *Crave*, including “several friends of importance,” “the mean girl / nemesis,” the “best guy friend,” and the “vampire prince” and “vampire king.” But anyone reading the actual books would see that Reiss is seriously overreaching to draw false character parallels. Reiss also concludes without explanation that these characters’ alleged similarities “are decidedly not genre tropes” (Reiss ¶ 67), when in fact they are, as shown below.

The following breakdown, while not exhaustive, shows all of this:

1. Macy/Amanda

Reiss first claims that the “friend” characters Macy (*Crave*) and Amanda (*BMR*) are similar because they are childhood friends of the protagonists, and because “Amanda is a school cheerleader,” while “Macy is on the school dance team with ‘pom poms.’” (Reiss ¶ 61.) This is a tremendous overreach. The only similarity between Macy and Amanda is that they are both female friends of the protagonists in the respective works.

- In *Crave*, Macy is a major character. She is a witch and Grace’s cousin and becomes Grace’s roommate and best friend. Macy has a vivacious and nurturing personality along with an eclectic fashion sense and vibrantly colored hair. Macy and Grace become incredibly close, and the power of their friendship is a key theme in *Crave*.
- Unlike Macy, Amanda in *BMR* is a minor character. She and Anna used to be friends until Taylor, the “Queen Bee” of the trio, ordered Amanda to ditch Anna. Since Amanda and Anna are no longer friends, Amanda’s role in the story is very minimal.

The supposed “dance/cheerleading” similarity Reiss cites is barely even worth mentioning. Macy being on the school dance team and Amanda being a cheerleader are minor details barely noted in the books. Being on the school dance team is not important to Macy’s character arc, and Amanda is such a minor character that she doesn’t really have a character arc.

2. Lia/Taylor

Reiss then argues that “mean girl / nemesis” characters Lia (*Crave*) and Taylor (*BMR*) are parallel because they turn out to be evil creatures (Lia a vampire and Taylor a “supernatural succubus”) who try to harm the protagonist. (Reiss ¶ 62.) This is also a misleading oversimplification.

- Lia is a vampire and student at the boarding school and is described as Asian with black eyes and a slight English accent. Lia initially befriends Grace but has ulterior motives; she later attempts to use Grace as a human sacrifice in a spell to attempt resurrect her dead boyfriend (Hudson, her self-proclaimed mate). While Lia secretly wishes to harm Grace,

she is portrayed as isolated, nerdy, and initially friendly—nothing like a stereotypical high school “mean girl.”

- Taylor in *BMR* is a stereotypical high school “mean girl.” She is described as your typical blonde, blue-eyed darling, which is a conventional beauty trope. Depending on which manuscript you read, Taylor is either the alpha of a long-standing trio of friends who suddenly breaks off the friendship with Anna (*BMR* 2011), or a new friend that comes between long-time best friends Amanda and Anna (*BMR* 2013). Also depending on the draft, Taylor is either half-Succubus or possessed by a demon, but she is always a “mean girl” and the one who breaks up a friendship and causes Anna pain and embarrassment.

Reiss claims that “Taylor and Lia both drug the heroines” (Reiss ¶ 62), but an antagonist drugging a protagonist is not an original idea. And this concept unfolds and is expressed very differently, as shown in detail in Section II.J below.

3. Flint/Brendan

Reiss next claims that “best guy friend” characters Flint (*Crave*) and Brendan (*BMR*) are parallel because both “joke around with the heroine, calling her silly names” and “are described as being of mixed race, part Black, with warm brown skin, and both are gay.” (Reiss ¶¶ 63-64.) There are many things wrong with this.

First, it is not remarkable for teenaged female protagonists in YA books to have “best guy friends” or for a teenaged girl’s “best guy friend” to “joke around with her and call her silly names.” These are such generic ideas (both in books and real life) that examples aren’t even needed.

Second, while it is true that these particular characters are non-white and gay, these traits commonly appear in YA Paranormal Romance friend characters, including because it is a way to add diversity to the cast of characters. Non-white, gay best friends are ubiquitous in books, TV, and film, for example in *True Blood* (Lafayette Reynolds), *The Gay Best Friend* (Domenic Marino), *Crazy Rich Asians* (Oliver), *To All The Boys I’ve Loved Before* (Lucas), *My So Called Life* (Enrique “Rickie” Vasquez), *Unbreakable Kimmy Schmidt* (Titus Andromedon), and *Emily in Paris* (Julien). I noted the common use of the tropes “hot guy friend” or “best guy friend who is a gay” on p. 6 of my opening report.

Third, and illustrating the richness and sophistication of *Crave* in comparison to *BMR*, Flint is a much more nuanced and developed character than Brendan. Flint is a “dragon” (a rival faction to Jaxon’s vampires)⁵ and initially seen as a possible love interest for both Grace and Macy. It is only revealed in book 2 (*Crush*) that he is gay and in love with Jaxon. And his relationship with Grace is complicated; at one point, he actually tries to kill Grace to foil Lia’s plan to use Grace to resurrect Hudson. (*Crave* pp. 414-415, 462-474.) Brendan on the other hand is more of a stereotypical “gay best friend,” who Anna trusts and confides in. If anything, his role is more analogous to Grace’s best friend Macy than it is to Flint.

⁵ This in part explains why Jaxon “doesn’t like Grace being with Flint.” (Reiss ¶ 65.)

Finally, while Brendan is revealed at the end of *BMR* 2013 to be a “faery,” Freeman provides this information almost as an afterthought, unlike Flint, whose dragon nature is integral to his personality and woven throughout *Crave*. Brendan and other side characters (besides arguably Taylor) are *not* noted to be paranormal in *BMR* 2011. The fact that *Crave* is populated with overt paranormal characters (both the central characters and more minor ones), while in *BMR* only some of the characters are paranormal (to the extent it is even mentioned) is a major difference that Reiss ignores.

4. Cyrus/Julian

Reiss claims at various points that the “vampire king” (Cyrus Vega) in *Crave* and “vampire prince” (apparently referring to Julian) in *BMR* are parallel. (Reiss ¶¶ 34, 65.) This is another major reach.

- Cyrus, the evil Vampire King, is the ultimate villain of the *Crave* series. He is Jaxon and Hudson’s father; he has abused his sons their whole lives and wants to harvest their powers for evil. Cyrus is genocidal and aspires for total domination. He killed all the gargoyles (except Grace who was hidden from him) to steal their crown and take their power and is plotting to kill the other supernatural creatures too.
- Julian’s role and traits depend on which manuscript you consider. In *BMR* 2011, he is a vampire and wants to take Anna as his bride, believing she is the reincarnation of his beloved Elise (who lives in another realm). In *BMR* 2013, he is an “Incubus” and revealed to really be Anna’s father.

Cyrus and Julian are completely different characters. Cyrus certainly does not want Grace to be his bride, and there is no idealized romance or familial connection between them. Cyrus is much more powerful, dangerous, and ruthless than Julian, who is motivated by his past love and wants the love of the heroine. While Julian’s role in *BMR* is inconsistent and ambiguous, it is a serious stretch to categorize him as a counterpart to the ultimate villain Cyrus. Moreover, virtually every book in this genre has a powerful supernatural villain and the rivals are on the brink of war; these are standard tropes in this genre, as discussed in my opening report.

5. The “Bloodletter”

Reiss makes much of the fact that both works contain an evil character called the “Bloodletter.” (Reiss ¶¶ 34, 35(g), 100-101, 106, 111-114.) Reiss argues that the “Bloodletter” is “a spine-chillingly unique and specific name, unlikely to be conjured by another author by coincidence.” (Reiss ¶ 111.)

First, Reiss is simply wrong that “Bloodletter” is a “unique” idea of Freeman’s. As I showed in Section II.A above, calling an evil vampire character the “Bloodletter” flows naturally from the trope of vampires drinking blood, and numerous other vampire books have used this idea. There is also nothing unusual about relegating an evil character such as this to a remote, creepy ice cave (Reiss ¶¶ 111-114), especially since both books are set in arctic Alaska.

Most importantly, the two “Bloodletter” characters serve different purposes and are not in fact alike:

- In the *Crave* series, the Bloodletter is a female vampire who is Jaxon’s “mentor” and the most “vicious and powerful vampire in existence.” (*Crave* p. 563.) She earned her fearsome name for her practice of hanging humans upside down in her cave to drain their blood into large buckets for easy feeding. (*Crave* p. 565.) She taught Jaxon how to harness his power and break his mating bond with Grace, at his request. (*Crave* pp. 563, 567-571.) She is only briefly introduced in the final bonus scenes from Jaxon’s point of view in *Crave* but plays a larger role in subsequent books in the series.
- The character Ronan O’Faolain in *BMR* is sometimes referred to as “Chief Druid” in *BMR* 2011 (p. 432) and “Ronan the Bloodletter” in *BMR* 2013 (p. 107). His role is inconsistent in the two manuscripts I reviewed. In *BMR* 2011, Ronan is a druid who was responsible for the wholesale slaughter of his own people. (pp. 432-434.) He also tricked twelve Celtic priests and priestesses and bound each to a cursed object of power, which Captain Cook brought from New Zealand to Alaska (note that nothing remotely like this appears in the *Crave* series). (pp. 432-434.) In *BMR* 2013, he is called “Ronan the Bloodletter” and trapped the spirits of thirteen priests and priestesses into cursed objects. (pp. 107, 243-244.) Later in *BMR* 2013, it is revealed that Ronan has been appearing to Anna as a raven in her prophetic dreams, and that she freed him in the alternate realm Annwyn by mistake. (*BMR* 2011 pp. 602-603, *BMR* 2013 pp. 452-454.)

The fact that these characters are entirely different in their traits and purpose within their respective stories shows the lack of commonality. And further, if we were to consider the fact that an author used an ostensibly unique character name to be evidence of copying, note that Freeman herself has done that. For example, she used “Nyx,” which appears in the book *Marked* by PC Cast, published before *BMR* was written.

6. “Shared Names”

Finally, Reiss claims in ¶ 34 that the works have “shared character names including The Bloodletter, Marise, Lily, Collin (Colin), Aedan (Aidan), Emma, Gwendolyn (Gwen), Macy (Mason).” This is an enormous reach:

- “Marise” has no counterpart in *BMR*, unless Reiss is referring to Marcheline—which is an entirely different name. Even if one could judge the names as similar, Marise is the school nurse, a vampire, and a minor character; while Marcheline is Anna’s mother, a central character, and a witch.
- There is also no connection between the names Macy and Mason, other than a phonetically similar first syllable. Beyond their names, Macy is a main female character—Grace’s cousin who becomes her roommate and best friend at the school and is also a witch. Mason is a male and the most minor character in Anna’s friend group, who has a love of magic tricks and is later revealed to be a secret Leprechaun. None of these characters has the same character traits or motivations as Reiss claims.
- Lily is a very minor background character in *Crave*, glimpsed at the welcome party with no description or character traits, while Lily in *BMR* is an important character—Ash’s twin sister, part of his family clan, and a werewolf or cougar, depending on the version of *BMR*. Aside from the shared name, which is an extremely popular and common girl’s name in the United States, these two have nothing in common.

- Colin does not appear *Crave*; he is a minor character mentioned two times in *Court*. Collin (spelled differently) is Ash's cousin in *BMR*, also a minor character. Colin is another common name, and it appearing in two books for minor characters does not suggest theft.
- I did not find mention of Aedan, Emma, or Gwendolyn in *BMR* 2011 or 2013.

J. Paragraphs 68-71: “Party Scenes / Spiked Drinks”

Reiss argues here that the heroines in both books “go to parties and imbibe a spiked drink that evening,” and that this is significant similarity because “[t]hese scenes and their particular similarities are *used for the same reason* in” both books. (Reiss ¶¶ 68, 71.) This is just not true when one reads the actual scenes. The full chapters encompassing these scenes (chapter 28 of *BMR* 2013 and chapters 12-13 of *Crave*) are included in the Appendix at pp 132-145. Any ordinary reader could easily see at least the following:

- The party scene Reiss mentions in *BMR* is a typical unchaperoned teen party, complete with peer pressure, flirting with boys, and spiked drinks in ubiquitous red cups, details that are familiar from almost every teen movie ever made. Anna is brought to the party by her former best friends, ostensibly so they can make up. Then the demon inside Taylor reveals itself and compels Anna to drink punch that's been spiked with the liquor Everclear (a stereotypical “spiked punch” scenario).⁶ Anna soon begins acting recklessly because she is literally drunk from the spiked punch, until she is rescued by her new friends and Ash, who pick her up and remove her from the situation.
- In *Crave*, Grace goes to a school-sponsored “welcome” party but leaves quickly after feeling out of place. She flees to the library, where she runs into Lia, a fellow student who bonds with her over their shared love of libraries and books. Lia brings Grace to her dorm room and makes her tea, which she secretly spikes with poison (not booze). Grace doesn't know that Lia has dangerous ulterior motives, so she drinks the poisoned tea, then ends up puking a little while later.
- Reiss contends that these are “key early scenes in the plotline of both books” and states that they fulfill identical functions in each book, to “demonstrate early on that the heroine is in danger.” (Reiss ¶ 71.) In actuality, the party scene in *BMR* 2013 comes past the midpoint of the story, while the party scene in *Crave* comes very early in the book. And each heroine has already come under threat by the time these party scenes take place. These scenes are not similar and do not fulfill the same exact function.

K. Paragraphs 72-73: “Attack Scene”

Here, Reiss claims that two particular scenes where the heroines are attacked by villains are “remarkably similar.” (Reiss ¶ 72.) Simply reading both these scenes demonstrates that Reiss is again overreaching and distorting the works. The attack begins at the bottom of p. 518 of *BMR* 2011 (in chapter 48). In *BMR* 2013, the scene begins on p. 58, in chapter 6. The allegedly similar scene in *Crave* occurs on pp. 52-61 (spanning chapters 6-7). Side-by-side comparisons of *Crave* to both the *BMR* 2011 scene and *BMR* 2013 scene are included at pp. 146-163 and 164-181 of the Appendix, respectively.

⁶ That it was Everclear is revealed in the next chapter, on p. 282.

In general, the claimed similarities in these scenes are just natural consequences of each main character finding herself in the midst of a physical altercation. And here again, Reiss provides short clips and phrases without their context (for example bullets of ¶72), using ellipses to attempt to hide ways in which even the wording and sentences she is discussing significantly differ. This is obvious by reading the scenes themselves.

The below discussion summarizes my more specific observations (which any reader could observe):

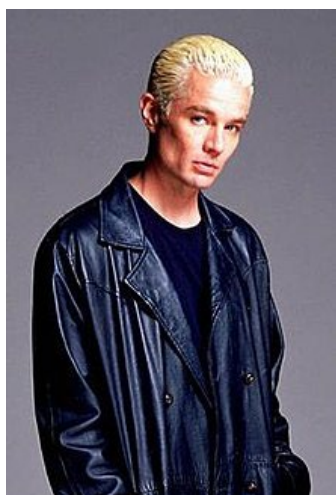
Setting, scenario, and events. Reiss claims a number of specific similarities (Reiss ¶ 72 (bullets)) and concludes that the two attack scenes “track exactly the same way, and the sequence of specifics do not reflect tropes or a convention of genre” (Reiss ¶ 73). I disagree.

- There are two attackers in each scene, but the purpose for each attack is different—for *Crave*, it’s to throw Grace out into the frigid winter to kill her, and for *BMR* it’s to force Anna into a van to abduct her.
- The fact that both attacking duos are supernatural creatures is something expected in a YA Paranormal Romance, not an unusual similarity. And they are different supernatural creatures, with the duo in *Crave* being werewolves and the duo in *BMR* being vampires.
- The locations of the scenes are different. *Crave* features an indoor scene at the boarding school, while *BMR*’s attack takes place outdoors in a convenience store parking lot.
- Particularly important, Anna in *BMR* succeeds at fighting back the attackers. In *BMR* 2013, she has headbutted and bloodied one of the attackers and escaped from his grip, and is “on the balls of [her] feet, fists up, ready to take Billy on and the Hulk too,” when the attackers suddenly flee after seeing Ash come running. (*BMR* 2013 p. 60.) In *Crave*, Grace has fought back some, but is fleeing in panic from the attackers, who are pursing and blocking her, when she turns and suddenly runs into Jaxon, who has come to save her. (*Crave* pp. 57-58.)
- The roles of the romantic leads in the fights are also completely different. In *Crave*, Jaxon directly intervenes and saves Grace. He comes into the attack, physically removes Grace from harm’s way, and dominates the attackers into submission. He reminds them of the rules and forces them to apologize to her. In *BMR* 2013, Ash merely comes running to the scene, and the attackers flee upon seeing him without interacting with him.
- If we consider *BMR* 2011, the sequence of events is no less different. As just explained, Jaxon intervenes and rescues Grace in *Crave*, beating up the attackers and causing their submission. Ash is not involved at all in the attack scene in *BMR* 2011. And far from being rescued, Anna and her friends are kidnapped by the attackers in *BMR* 2011, with the scene ending with the van doors closing behind them and Anna musing that they are now “the kids on the back of the milk cartons.” (*BMR* 2011 p. 522.)

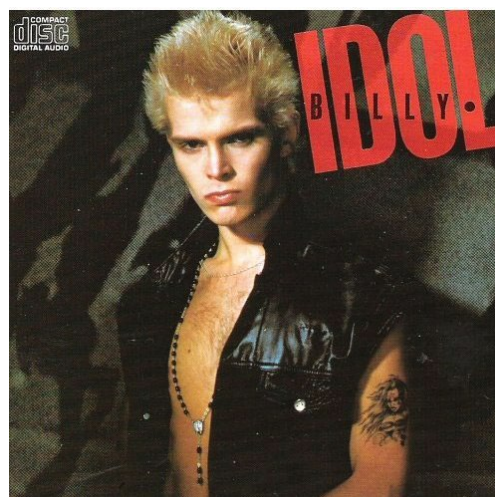
Description of attackers. Reiss also misrepresents the degree to which the pairs of attackers have a similar appearance and characteristics. She says that the characters are the same “types of characters,” have the same “paranormal attributes” and “clothing styles,” and that both heroines “think their attackers look like 1980’s rockers.” (Reiss ¶¶ 72-73.) This is very misleading, and none of the alleged similarities is notable.

- First, the *Crave* attackers are fellow teen students, while the *BMR* attackers are strangers and grown men. Reiss omits this major difference.

- Reiss highlights that both sets of attackers are not dressed for cold weather and “don’t feel the cold.” (Reiss ¶ 72 (bullet 1).) But being impervious to the cold is a common feature of both vampire and werewolf lore.
- Reiss says that as to both sets of attackers, “one is tall and thin, the other is stocky.” (Reiss ¶ 72 (bullet 2).) But a duo of men where one is tall and one is stocky is a common trope throughout all of popular culture, including, for example, classic movie pairings like Arnold Schwarzenegger and Danny DeVito in *Twins*, villains Marv and Harry in *Home Alone*, Groot and Rocket in *Guardians of the Galaxy*, C-3PO and R2D2 in *Star Wars*, and dating back at least to the comedy duos Laurel and Hardy and Abbott and Costello.
- Reiss then states that “[b]oth heroines think their attackers look like 1980’s rockers.” (Reiss ¶ 72 (bullet 3).) But Reiss ignores important details. In *Crave*, the attackers are described as 1980s *concert goers* wearing Motley Crüe t-shirts (who are mistaken for ghosts at first), while in *BMR*, they are described as looking like 1980s *rock stars*—with the shorter one specifically described as looking like Billy Idol. In terms of attire, the *Crave* attackers are fleshed out with many details, such as Motley Crüe t-shirts, ripped jeans, Timberlands, and the taller one’s black septum ring. The details are more sparse in *BMR*, where Billy is described as wearing a black leather jacket, a dog collar and an earring and Hulk is wearing a t-shirt and jeans.
- Finally, while neither of the *Crave* attackers looks like Billy Idol, note that the idea of a “thug” character looking like Billy Idol is itself a common trope in popular culture, and not original to Freeman. For example, this trope was used for the character Spike from the TV show *Buffy the Vampire Slayer*. Pictures of both are below:



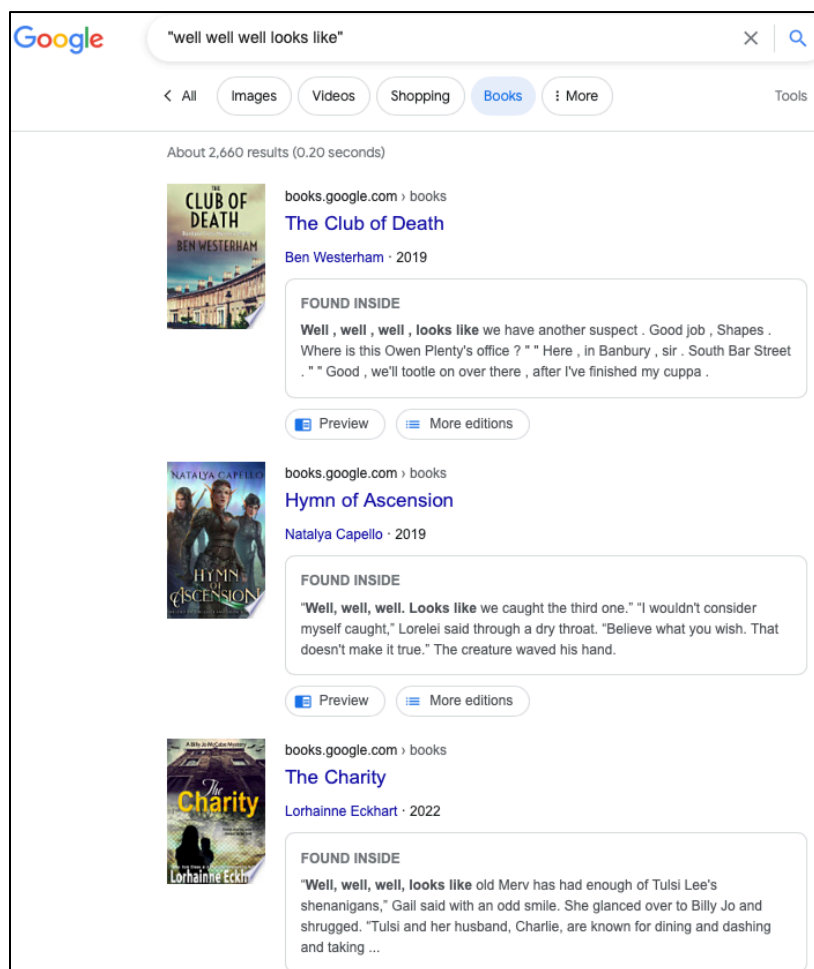
“Spike” from *Buffy*



Billy Idol

Language. Reiss emphasizes that in both works, “[O]ne attacker speaks to the heroine in a menacing tone *saying the same thing*.” (Reiss ¶ 72 (bullet 4).) First, an attacker would be expected to speak in a “menacing tone.” As to the actual language, Reiss is referring to the phrase “Well, well, well. Looks like.” This is a short, commonly used phrase, and it was used in literature and popular culture long before Freeman wrote *BMR*. Indeed, searching Google Books for “well

well well looks like” shows that several thousand other books have used that exact phrase.⁷ Here is a screenshot of just the first several:



Pointing to a common phrase like “well well well looks like” as evidence of plagiarism just shows how unreasonable and overreaching Reiss’s arguments are.

Fight choreography. In the last four bullets of ¶ 72, Reiss claims that the fight scenes are similar because in both, the heroine is restrained, wants to damage the attacker’s feet, struggles and gets a bloody mouth, and “puts her fists up.” But these are the epitome of common actions that flow naturally in fights throughout literature and popular culture. It would surprise me if a scene where a woman is attacked by two thugs did not have at least some of these tropes.

- Reiss first claims that in both works, “[t]he stocky attacker restrains the heroine in exactly the same way.” (Reiss ¶ 72 (bullet 7).) This is not true. In *BMR*, Anna is restrained with her wrists twisted behind her back, and in *Crave* Grace is restrained with an arm across her chest. But it is not necessary to get bogged down in these details because a character being restrained in a fight scene (especially a female attacked by larger men) is extremely common, and even expected in fight scenes.

⁷ Visit books.google.com and search for “well well well looks like” (showing 2,660 results as of the date of this report).

- Reiss then claims that in both scenes, “[t]he heroine wants to damage the attacker’s feet.” (Reiss ¶ 72 (bullet 8).) But this concept flows naturally from the idea of someone having her arms restrained. Once the choice to restrain the a character’s arms has been made, the other physical choices—fighting with feet and heads—flow from that determination since the heroine no longer has the use of her arms and hands.
- Reiss also says that in both works, “[t]he heroine struggles and her mouth bleeds.” (Reiss ¶ 72 (bullet 9).) But a person struggling and getting her mouth bloodied in a fight is common.
- Reiss then says that in both fights, “[t]he heroine puts her fists up.” (Reiss ¶ 72 (bullet 10).) It is difficult to think of anything more common and less original than a person in a fight putting her fists up.

L. Paragraphs 190-210: Popular Culture References

Later in her report, Reiss claims that “both stories incorporate a remarkable number of the same or similar books and popular culture references.” (Reiss ¶¶ 190-210.) This is not “remarkable” at all. Reiss is essentially claiming that Wolff must have plagiarized Freeman because both authors chose to briefly reference Shakespeare, Peter Pan, Sleeping Beauty, Humpty Dumpty, Harry Potter, Star Wars, and similar popular canon in their books. But Reiss herself acknowledges that “[t]hese are all, of course, historic and/or popular culture references that no one has a monopoly over and many other books have used.” (Reiss ¶ 210.)

Reiss goes on to argue that “there is nothing about the Young Adult genre that would call for the use of any of them, and the shared combination of all of them in both authors’ works is remarkable.” (Reiss ¶ 210.) That makes no sense. It is extremely common for authors to make popular culture references—the YA genre is no exception. By Reiss’s logic, any YA author who has done so must have plagiarized Freeman. And in particular, it is perfectly natural for two authors writing YA romance novels to reference popular teen characters, books, and movies like Romeo and Juliet (the quintessential teen love story), Harry Potter, and especially Twilight, which spawned the YA Paranormal Romance genre as I previously showed (Easton Rep. pp. 15-16).

* * *

The above discussion shows how it is necessary to look at the works themselves rather than Reiss’s misleading descriptions of them. These examples are not exhaustive, and I have provided them only to illustrate how inaccurate and misleading Reiss’s comparisons are. If requested, I expect that I could provide a similar point-by-point rebuttal to all the comparisons in the Reiss Report and FAC, and reserve the right to do so if requested.

III. “Victorian Houses”

In an earlier section of her report, Reiss likens novels in the same genre to “Victorian houses” that she says “will have architectural elements in common, but they will generally NOT have the same furniture, the same wallpaper, the same clothes hanging in the closets, or the same food in the fridge,” and more specifically, “will generally NOT have the same plot points, characters, details of setting, and so on.” (Reiss ¶ 18.) She goes on to cite Harry Potter and Star

Wars as examples of “Victorian houses” that have different “floor plans,” “wallpaper,” and “furnishings.” (Reiss ¶¶ 21-24.) Reiss’s analogy is pointless. Ordinary readers do not need to analogize YA books to houses to understand them and judge whether they are substantially similar. YA books are not highly scientific or technical. They are written for young adults, not academics or professional writers.

Having read *BMR* and *Crave* closely for this and my opening report, I believe that ordinary readers will find that they simply do not share the same “plot points, characters, details of setting, and so on” as Reiss presumes, and that to the contrary, they are just as different as Harry Potter and Star Wars. But the point is that ordinary readers, not Reiss (or me), should be able to make that judgment for themselves. There is no need to complicate things by analogizing the YA books at issue in this case to “Victorian houses” (or anything else).

IV. “Mosaic Writing” And Writing Style

At the end of her report, Reiss discusses a concept she refers to as “‘mosaic’ or ‘patchwork’ writing.” (Reiss ¶¶ 214-215.) I am not an expert in judging “mosaic writing,” but even if we accept Reiss’s definition of that concept, and even if that concept were relevant, there is no reason why ordinary readers could not judge this for themselves.

Reiss goes on to describe a process of writers “cutting apart and reassembling” pieces of their work as part of the writing and revising process. (Reiss ¶¶ 216-219.) This is unremarkable. Of course, novelists cut and rearrange their content as part of the writing, revising, and editing process. Although we are only seeing the polished, published versions of the *Crave* series, Tracy Wolff, like all authors, had to have gone through a writing, revising, and editing process with her books. This uncontroversial process, used by every writer I have ever worked with, does not support the plaintiff’s claim of plagiarism. And Reiss does not need to explain this basic fact about writing to ordinary readers, who will likely intuitively understand it, and anyway will be judging these books as readers, not as writers or editors.

Finally, a few points about tone and writing style. As I pointed out, Reiss concedes that ordinary “readers might not notice” any similarities “because of the difference in tone and voice between Freeman’s manuscripts and Wolff’s novels.” (Reiss ¶ 32.) I cannot emphasize enough how great a difference this is between the two works.

As someone who has judged writing quality and creativity in my role as publisher for decades, I have found that tone and voice are key ingredients that make a story connect with a wide audience of readers. A well-plotted story in the hands of a merely serviceable writer can be flat and easily forgotten. While even an overly familiar storyline in the hands of a talented and imaginative writer can make readers hang on for every plot twist and turn and fall in love with the characters.

In my professional assessment, the overall language in *Crave* is rich and imaginative throughout. And in my own reading of the two *BMR* versions shared with me and *Crave*, I experienced them as separate and distinct worlds populated by very different characters driven by unique motivations, aside from the common tropes I’ve discussed. For example, as compared with *BMR*, *Crave* is much more focused on the intense romantic connection between Grace and Jaxon,

and Wolff's writing of these intimate romantic scenes is much spicier and descriptive as compared to both the Anna/Ash romance in *BMR* and most other YA romance books. Wolff's lighter and sometimes sarcastic tone, quick takes on pop references, and short punchy chapters pull contemporary readers along through the story at a fast pace. And the plot is carefully crafted and includes intricate world building that develops and deepens throughout the Crave series. Although *BMR* also has a fully developed plot and world building, the characters feel more superficial and stock, and the voice feels more traditional and unremarkable.

For these reasons, the claim that Wolff lifted hundreds of familiar stock phrases that are found in countless books in this genre, as well as in other genres featuring romance, to use as the basis for her own writing is entirely unbelievable. The phrases highlighted as similar by the plaintiff and Reiss are too unremarkable to be worth the extra time and effort such an undertaking would require. There is simply no reason why Wolff would need to borrow stock phrases from Freeman or any other writer.

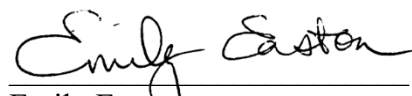
To sum up, Reiss's concession that ordinary "readers might not notice" any similarities is exactly the point. Readers will not notice the claimed similarities not because the books are too complicated or subtle, but because they are very different.

V. Conclusion

The Reiss report is untrustworthy because, among other things, it relies on her comparisons of short quotes and phrases that are taken out of context, as well as on her own inaccurate and misleading summaries of *BMR* and the Crave series rather than the books themselves. Reiss's comparisons and summaries are often wrong and a deliberately distorted substitution for the works themselves. Not only does Reiss describe the works in an inaccurate and misleading manner intended to portray false similarities, but she completely disregards the vast number of differences between the books, which far outweigh any superficial shared genre tropes.

Reiss's comparisons and descriptions are also unnecessary; ordinary readers can easily compare the two works and see for themselves whether they are substantially similar and whether the claimed (and mostly misrepresented) similarities result from genre tropes or *scènes à faire*. While Reiss seems to acknowledge the widespread existence of tropes in the genre, she nonetheless ignores those tropes in a selective manner designed to focus on supposed similarities that do not withstand scrutiny.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.


 Emily Easton

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2023, I caused a true and correct copy of the foregoing Defendants Tracy Deebs-Elkenaney p/k/a Tracy Wolff, Entangled Publishing, LLC, Holtzbrinck Publishers, LLC d/b/a MacMillan, and Universal City Studios LLC's Expert Rebuttal Report by Emily Easton to be served on the following:

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